

DATE: May 11, 1998

CASE NO: 97-STA-0020

In the Matter of

CHRISTOPHER P. FISHER

Complainant

v.

ABC TRAILER SALES & RENTAL, INC.

Respondent

**RECOMMENDED DECISION AND ORDER APPROVING SETTLEMENT
AND APPROVING WITHDRAWAL OF COMPLAINT**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (1994). A general release was executed by Complainant and Respondent on August 20, 1997, respectively, and was submitted for my review and approval on March 17, 1998 along with copies of three checks. The Settlement Agreement provides that Complainant withdraws the complaint herein.

I must determine whether the terms of the agreement are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.3d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The Settlement Agreement provides that Complainant releases Respondent from claims arising under the Surface Transportation Act as well as under various other laws. This review is limited to whether the terms of the settlement are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the STA. *Kidd v. Sharron Motor Lines, Inc.*, 87-STA-2 (Sec'y July 30, 1987).

The Settlement Agreement states that Respondent will pay Complainant a specified amount. In addition, the Secretary requires that all parties requesting settlement approval of cases arising under environmental protection statutes provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal

claim, or to certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Co.*, 95-TSC-7, ARB Case Nos. 96-109, 07-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. The general release states that it contains the entire agreement between the parties concerning this matter. Accordingly, the parties have certified that the agreement constitutes the entire and only settlement agreement with respect to Complainant's claims.

Finally, I note that the agreement makes no reference to a fee for Complainant's attorney. Thus, it appears that Complainant will pay his attorney's fee, if any. The Secretary has held:

Where attorney's fees are incorporated in an agreement, the ALJ does not approve the fee amount. If, however, the parties submit an agreement providing for Complainant to pay his attorney, the ALJ must take into consideration whether the net amount to be received by Complainant is faire, adequate and reasonable.

Tinsley v. 179 South Street Venture, 89 CAA-3, Sec. Order of Remand, Aug. 3, 1989, slip op. at 3. In more recent decisions, the Secretary has held that it is not necessary for a settlement to specify the amount of an attorney's fee. *Guity v. Tennessee Valley Authority*, 90-ERA-10, ARB Case No. 96-180, Aug. 28, 1996, *Klock v. Tennessee Valley Authority*, 95-ERA-20, OAA May 1, 1996. Therefore, there is no requirement that the settlement agreement in the instant case include the amount of the attorney's fee for which the Complainant is responsible.

I find that the agreement, as construed above, is a faire, adequate, and reasonable settlement of the complaint. Accordingly, I APPROVE the agreement and APPROVE THE WITHDRAWAL OF THE COMPLAINT WITH PREJUDICE.

SO ORDERED.

PAUL H. TEITLER
Administrative Law Judge

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded for review by the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, D.C. 20210. *See* 29 C.F.R. § 1978.109(a); 61 Fed. Reg. 19978 (1996).